

MEETING MINUTES CITY OF MILPITAS

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, October 3, 2006
Time: 6:00 PM Closed Session, 7:00 PM Public Business
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

ROLL CALL

Mayor Esteves called the meeting to order at 6:00 PM.

PRESENT: Mayor Esteves, Vice Mayor Gomez, Councilmembers Giordano, Livengood and Polanski

ABSENT: Vice Mayor Gomez absent for Closed Session, he arrived at 7:15 PM.
Councilmember Giordano departed the meeting at 8:47 PM.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following issues:

1) Conference on labor negotiations for collective bargaining: City Negotiator: Carmen Valdez
Employee Organizations: Milpitas Professional and Technical Group (ProTech). Under
Negotiation: Wages, Hours, Benefits, and Working Conditions

2) Conference with legal counsel on existing litigation: City of Milpitas v. Turner Construction et al., Santa Clara County Superior Court

The City Council reconvened in Open Session at 7:00 PM with Mayor Esteves presiding and three Councilmembers present.

CLOSED SESSION ANNOUNCEMENT

None

PLEDGE

Boy Scouts Troop No. 92 Color Guard led the Pledge of Allegiance.

INVOCATION

Mayor Esteves offered a prayer as invocation for the meeting.

MINUTES

MOTION: approve minutes of the September 19, 2006 City Council meeting

Motion/Second: Councilmember Giordano/Councilmember Polanski

Motion carried by a vote of:
AYES: 4
NOES: 0
ABSENT: 1 (Gomez)

SCHEDULE OF MEETINGS

MOTION: to approve the Schedule of Meetings, as amended

Councilmember Livengood would attend on second Thursdays, Oct. 12 this month, at 4:30 pm for the Treatment Plant Committee in San Jose (monthly). Also announced was the special City Council meeting scheduled for Wednesday, October 11 at 6:00 PM for City Manager interviews.

Motion/Second: Councilmember Giordano/Councilmember Polanski

Motion carried by a vote of:
AYES: 4
NOES: 0
ABSENT: 1 (Gomez)

PRESENTATION

Tsukuba City, Japan Sister City Mayor Esteves formally welcomed 25 visitors from that City upon the 10 years Anniversary Commemoration of its Sister City relationship with the City of Milpitas. Members of the visiting delegation from Japan were present to receive warm greetings from Mayor Esteves, and he received a letter of greeting from the Tsukuba Mayor Ichihara, read aloud by one of the City Councilmembers. Gifts between the cities were exchanged also. Appreciation was given to Sister City Commissioner Echo Arthur, who translated the Japanese greetings for the City Council.

Mayor Esteves proclaimed “**Fire Prevention Week**” for the week of October 8-14, 2006 and Fire Chief Frank accepted the proclamation.

California Assemblymember Alberto Torrico was introduced and provided an oral legislative update. He addressed retirement issues, including contributions by governments to public pensions. He also reviewed three significant bills he had introduced and were passed in Sacramento, and discussed bond measures on the state ballot next month.

PUBLIC FORUM

Tim McCormick, business representative for City of Milpitas ProTech employees within the AFL-CIO, spoke on behalf of approximately 45 members in the audience sporting blue t-shirts. He asked what happened to the trust that had built up between elected officials and the employees in Milpitas. The union had agreed to terms, but he wondered why there was no contract lately. He began latest efforts in July, but there was no response. A reconciliation of the City’s budget was reached now and a no-cost contract seemed absurd, even though employees had agreed to wait. He stated there were flaws in the latest agreement on the table. Lastly, he discussed an amount of \$800,000 “surplus” he believed was in the adopted budget, and requested then a 1% increase for employees.

Linda Rabe, of Big Bend Drive, Milpitas, thanked the City Council for funding Arts Day held on Sunday, October 1. There was a great turnout of Commissioners and Public Art Committee members at the event, and she thanked City staff for their assistance. \$1,000 donation was received from Target, which would be saved toward next year’s Arts Day event.

Frank DeSmidt, of the Milpitas Chamber of Commerce, invited all to the October 13 Good Morning Milpitas breakfast event, featuring MUSD Superintendent Dr. Karl Black as speaker, 7:30 AM at the Embassy Suites. Also, on Thursday, October 19, the Chamber would sponsor the “Candidates’ Forum” in the City Hall Council Chambers at 7:00 PM.

ANNOUNCEMENTS

Councilmember Livengood responded to remarks about the budget deficit and revenues - and the union representative claiming there was an \$8 million surplus. He requested information in the form of a memo from the City Manager or the Finance Director about the budget facts. He felt that nobody was constrained by the truth, while the adopted budget tells the truth. The financial condition of the City must be known and understood by all in the City. Staff would verify exactly what was in the budget.

Mayor Esteves agreed with the request for a written memo from staff. Finance Director Emma Karlen was present, and thus he asked for a brief statement to re-explain the budget status.

Ms. Karlen had prepared the FY 2005-06 budget, with an anticipated deficit when adopted. The budget plan originally was to balance the annual financial plan with Redevelopment Agency funds (the proceeds from property sales between the City and the Agency). Meanwhile, as she reported to Council previously, actual City revenues were better than projected and thus the City did not need to move funds from the RDA to the City’s general fund to offset any deficit (as was planned). There was \$8.8 million in revenue more than budgeted, offsetting the \$6.1 million that was going to be transferred, leaving \$2.7 million as additional revenue, from which the Council then set aside \$2.4 million of that money toward the liability of retiree medical benefits.

ANNOUNCEMENT OF CONFLICT OF INTEREST

None

APPROVAL OF AGENDA

Motion: to approve the agenda, as amended

City Manager Charles Lawson stated that Item No. RA6 belongs on City Council consent calendar, under “Ordinances” and it would then be Item No. 10 A.

Councilmember Giordano requested that Items No. 10 and No. 11 be heard earlier on the agenda, prior to the Redevelopment Agency, after unfinished business.

Motion/Second: Councilmember Livengood /Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted by an *asterisk), as amended

Item No. 12 was removed from the agenda, and continued to a future Council meeting.

Item No. 10A (listed on agenda as *RA 6.) was included on this Council Consent Calendar.

Motion/Second: Councilmember Livengood/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

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| * 1. Odor Control Plan Update | Received Odor Control Comprehensive Action Plan Update. |
| * 5. Economic Development Commission plan | Accepted the recommended Action Plan Implementation for a Branding Strategy and Entry Feature Signs, from the Economic Development Commission |
| * 6. Facilities Naming Sub committee recommendations | Approved Recommendation from the Facilities Naming Subcommittee to Request the County to Include Historically Themed Elements in the Milpitas Valley Health Center to Honor Early Medical Professionals in Milpitas |
| * 7. Child Care Grants | Approved Twelve Family Child Care Assistance Fund Grant applications |
| * 8. Sports Fund Grants | Approved Three Group and One Individual Youth Sports Assistance Fund Grants. |
| * 9. Zoning Approval for Single Family Home project | Approved “S” Zone No. ZA 2005-17 to develop a 1.33 acre parcel with a new 4,196 sq. ft. one story single family hillside residence with site modifications including removal of protected trees, grading and landscaping, at 802 Calaveras Ridge Dr., APN 029 06 029 zoned R1-H Single Family Residential-Hillside, for applicants Sam and Hemla Rao. |
| * 10A. Ordinances No. 192.16 and No. 192.17 regarding Redevelopment Plan | <p>Waived the second reading and adopted both of the following ordinances.</p> <p>Ordinance No. 192.16: an Ordinance of the City of Milpitas Amending Certain Time Limitations with Respect to the Amended and Restated Redevelopment Plan for the Milpitas Redevelopment Project Area No. 1</p> <p>Ordinance No. 192.17: an Ordinance of the City of Milpitas Amending Certain Time Limitations with Respect to the Redevelopment Plan for the Great Mall Redevelopment Project</p> |
| * 13. Annexing Parcels to Community Facilities District 2005-1 | Adopted Resolution No. 7631 Certifying and Annexing MP Milpitas Affordable Housing Associates, a California Limited Partnership, on N. Main Street to Community Facilities District No. 2005-1, Project No. 3192. |
| * 14. Approve Consultant Agreements | Approved Consultant Agreements with RBF Consulting and David J. Powers & Associates, Inc.- Environmental Services for on-call Services for Various Capital Improvement Projects and Non-CIP Projects |

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| <p>* 15. Approve Contract with Richard Carlson Consulting</p> | <p>Approved Contract with Richard Carlson Consulting for Computer Systems Enhancements to Integrate the Fire Department’s Record Management System with the Citywide Online Permitting System</p> |
| <p>* 16. Plans and Ad for Bids for Project No. 6103</p> | <p>Approved Plans and Specifications and Authorize the Advertisement for Bid Proposals: Main Sewage Pump Station Improvements, Project No. 6103</p> |
| | <p>At 8:47 PM, Mayor Esteves announced that the City Council would take a five-minute break. The Council reconvened at 8:53 PM, with Councilmember Giordano absent.</p> |

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

- RA 1. CALL TO ORDER** Mayor/Agency Chairman Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 9:16 PM.

RA 2. ROLL CALL **PRESENT:** Mayor/Chair Esteves, Vice Mayor/Vice Chair Gomez and Agency/Councilmembers Livengood and Polanski

ABSENT: Agency/Councilmember Giordano

RA 3. MEETING MINUTES Motion: approve the Redevelopment Agency minutes of September 19, 2006, including joint meeting with the City Council, as submitted.

Motion/Second: Agency/Councilmember Livengood /Agency/Councilmember Polanski

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Giordano)

RA 4. Approval of Agenda and Consent Calendar Motion: approve the agenda and RDA (less item RA6) consent calendar

Motion/Second: Vice Chair/Vice Mayor Gomez / Agency/Councilmember Livengood

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Giordano)

RA 5. Progress Report on new Library and East Parking Garage, Projects No. 8161 and No. 8162 City Engineer Greg Armendariz reviewed the status of the new library project (provided in the written staff report by Mr. Mark Rogge), and reported on last week's ground breaking ceremony for the library parking garage.

He requested approval of three recommendations:

 1. Approve the bidders list (eight companies), setting October 17 as the date for appeals, if any
 2. Approve the plans and specifications for the new library, based on those from the pre-qualified list
 3. Receive the oral progress report

Mr. Armendariz reported that nine statements of qualifications were received by the City with eight of those fully meeting requirements, per City staff review.

He then reviewed the status of the parking garage project, including the unique ground breaking ceremony held on September 26 with the auger piles going into the ground. Also, one change order was issued – unusually, as a credit to the Agency (not an additional cost item).

Motion: approve the three action items listed above

Motion/Second: Agency/Councilmember Livengood / Vice Chair/Vice Mayor Gomez

Motion carried by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Giordano)

RA 6. Two Ordinances

Moved to City Council consent calendar, as Item No. 10 A.

*** RA 7. Resolution Granting Initial Acceptance: North Main Street Utilities Project**

Adopted Resolution No. RA 267 Granting Initial Acceptance: North Main Street Utilities Project Weller Lane To Carlo Street Underground District No. 5, Project No. 8153

*** RA 8. Land Exchange Agreement with McCarthy Ranch Limited Partnership and Execute Grant Deeds, and Adoption of Two Resolutions**

For the Main Sewage Pump Station Site Improvements, Project No. 6079, approved the following actions:

Authorize and adopt the following:

1. Authorized the City Manager to execute a land exchange agreement with the McCarthy Ranch Limited Partnership, subject to approval as to form by the City Attorney, and to implement related actions noted in the agreement
2. Authorized the City Manager to execute grant deeds associated with the land exchange agreement
3. Adopted Resolution No. RA 269 authorizing a lot line adjustment between two adjacent parcels.
4. Adopted Resolution No. RA 268 summarily vacating the public service easement granted for storm water control.

RA9. ADJOURNMENT

Mayor/Chair Esteves adjourned the Redevelopment meeting at 9:21 PM.

JOINT PUBLIC FINANCING AUTHORITY AND CITY COUNCIL MEETING

FA 1. CALL TO ORDER

Mayor/Authority Chairman Esteves called to order the joint meeting of the Milpitas Public Financing Authority, meeting jointly with the City Council, at 9:22 PM.

FA 2. ROLL CALL

PRESENT: Mayor/Chair Esteves, Vice Mayor/Vice Chair Gomez and Authority/Councilmembers Livengood and Polanski

ABSENT: Authority/Councilmember Giordano

FA 3. Approval of Agenda

Motion: approve the agenda, as submitted

Motion/Second: Authority/Councilmember Livengood / Authority/Councilmember Polanski

Motion carried by a vote of:

AYES: 4

NOES: 0

ABSENT: 1 (Giordano)

FA 4. Resolutions for Sewer Bonds

Finance Director Emma Karlen explained the need for issuance of bonds for sewer system improvements needed in the City, for the new Capital Improvement Project - Main Sewage Pump Station improvements, Project No. 6103. She described the financing structure, and introduced principals from the firms hired to work with the City of Milpitas to prepare and conduct the sewer bond sales.

Motion: to adopt the following two distinct Resolutions, following the reading of the titles of the documents by the City Attorney, for proceeding with the bond issue

(1) City Council Resolution: Resolution No. 7629, Authorizing the Execution, Delivery and Sales of Certificates of Participation, 2006 Series A (City of Milpitas Sewer Financing) in the Principal Amount of Not to Exceed \$11,000,000 to Provide

Financing for Sewer System Improvements, and Approving Related Documents and Actions

Motion/Second: Vice Chair/Vice Mayor Gomez / Authority/Councilmember Polanski

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Giordano)

(2) Public Financing Authority Resolution: Resolution No. FA11 Authorizing the Execution, Delivery and Sales of Certificates of Participation, 2006 Series A (City of Milpitas Sewer Financing) in the Principal Amount of Not to Exceed \$11,000,000 to Provide Financing for Sewer System Improvements, and Approving Related Documents and Actions

Motion/Second: Vice Chair/Vice Mayor Gomez / Authority/Councilmember Polanski

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Giordano)

RA 5. ADJOURNMENT

Mayor/Chair Esteves adjourned the Financing Authority meeting at 9:26 PM.

REPORTS OF OFFICERS, COMMISSIONS, AND COMMITTEES

City Council

2. Noise at Gill Park and Neighbor Concerns

This matter was heard prior to the Redevelopment meeting.

Councilmember Polanski explained the petition she had received from neighbors living near Gill Park, where they had experienced loud, excessive noise from the nearby neighborhood park.

Resident Jennifer Ting spoke to Council about noise when parties or events take place at Gill Park. When calling the City to check on groups, invariably they do have a permit to allow the amplified music or sound. So, she asked the Council not to issue permits for amplified music or oration or speeches any longer, as that would alleviate the ongoing noise problem. Many neighbors were eager to sign the petition she had presented to Councilmember Polanski. Their point of view was that homeowners should not be disturbed in the privacy of their own homes.

Ms. Polanski clarified that there were no objections to having groups at parks, but it was the amplified music that had caused disturbance over the recent summer months.

Councilmember Livengood remarked that parks were supposed to fit in with the neighborhood. Maybe amplified music should not be allowed, as per the municipal ordinance, with some exceptions.

Councilmember Giordano noted that the City had a noise ordinance, and it allowed neighbors to call police to make complaints about this issue. She then asked Ms. Ting if problem was continuous or caused by one particular group. Ms. Ting responded the noise was from different groups at various times.

Councilmember Polanski requested clarification from staff on what was allowed.

City Manager Lawson asked Police Chief Graham to come forward. Both explained the permit process, and Mr. Lawson stated there no known complaints at Gill Park. Chief Graham noted one incident during the summer at Gill Park; there were complaints when the Police went to the park, where an allowance was granted for amplification.

Ms. Polanski stated her view that something should be done to correct this matter, solely at Gill Park. City Attorney Mattas reported that the Council could restrict noise in the one park, and staff could return with ordinance to that effect.

Mayor Esteves asked if other residents wished to address the Council.

Lan Gardine, lived next to the park, and felt the need to address some change in the park area.

Albert Ting, noted the City had a noise ordinance. He commented about police not knowing about the ordinance and allowed noise decibels.

David Han, lived on Pine Cone, stated he called police often about noise problems.

Ernest Chan, was a resident who lived near neighbor who spoke already.

Syed Bilgrami, said it's a free country, and as long as noise levels were ok, ensure that people can speak whatever they want.

Mayor Esteves thanked all the residents for coming to City Hall to comment about the noise in Gill Park. He thanked Councilmember Polanski for bringing this issue forward. He tended to go for the benefit of residents who live near the park, and wanted to look into regulating or not permitting amplified sound in that park specifically.

Ms. Polanski again thanked neighbors for their time.

Motion: direct City Attorney to return to the City Council with a draft ordinance for Gill Park which prohibits amplified music or sound in this specific park

Motion/second: Councilmember Polanski /Mayor Esteves

Motion carried by a vote of: AYES: 5
NOES: 0

Telecommunications Commission

3. Milpitas Community Television

This item was heard prior to the Redevelopment meeting.

Vice Mayor Gomez gave a brief overview of the current cable television franchise agreement permitting a new television studio in the City, which was presently being constructed downstairs on the first floor of City Hall.

Albert Acorn, Telecommunications Commission Chairman, provided a summary of the recommended Policies and Procedures for the new studio. Mr. Dinesh Gupta, the Policies and Procedures Subcommittee Chairman was thanked by Mr. Acorn and staff. He, Roger Shaw, and Syed Bilgrami had been meeting once each week for the past six months to complete the draft documents presented at this meeting to the City Council.

Mr. Gupta reviewed highlights of the new policies. Mr. Shaw created a procedures document for administrative operations of the tv studio, including who and what groups in Milpitas would be eligible for programming at what times, etc. Mr. Bilgrami was responsible for creating a website about the new Milpitas Community Television.

Councilmember Livengood was impressed with the effort that had gone into a sound policy and procedures document. He strongly suggested that the very first program or video on the new channel concern all about how the television station came into being.

Councilmember Polanski fully agreed with the remarks by her colleague.

Mayor Esteves said he believed that the new station would be well utilized and appreciated by Milpitas residents. He suggested that the Commission be very clear on equitable programming throughout the City, for our diverse population.

Motion: to note receipt of the oral report from the Telecommunications Commission, and to approve the Governing Policies and Operating Procedures for Milpitas Community Television

Motion/Second: Councilmember Livengood/Councilmember Polanski

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Giordano)

Utility Rate Subcommittee

4. Utility Rate Subcommittee – solid waste services

City Engineer Greg Armendariz reported on the outcome of the recent meeting of the subcommittee held last month.

This evening, Council was asked to approve the recommendation of the Utility Rate Subcommittee to approve the waiver for mandatory solid waste service and direct staff to prepare an ordinance modification.

Councilmember Livengood commented about the exception recommended for select homeowners, but that for future homeowners and when homes change hands, those new owners would be required to have the mandated service

Motion: to request staff to return to the City Council with appropriate documents for approval to grant waiver of solid waste services for specified Milpitas homeowners

Motion/Second: Councilmember Livengood/Councilmember Polanski

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Giordano)

NEW BUSINESS

Item adopted on Consent Calendar.

ORDINANCE

10. Ordinance 41.11 on Planning Commission appointment by Mayor

This item was heard prior to the Redevelopment Agency meeting.

With regard to the appointment of Planning Commissioners by the Mayor of a general law city such as Milpitas, City Attorney Steve Mattas reviewed the recent history of the Attorney General's opinion. That was an advisory opinion in California, which cities often follow and were given due regard, but it was not the law. In the past, Milpitas City Council has abided by AG opinions and thus the ordinance presented reflects the opinion of Councilmembers to continue that practice. The ordinance allowed that the Mayor holds the authority to make recommendations for appointments to all Commissions, including the Planning Commission.

The Ordinance was provided as a draft to permit the City Council to change the current process to appointment by the Mayor's recommendation to Council.

Councilmember Livengood commented that he received the fair summation of the Attorney General's opinion by the City Attorney. He approved of the recommendation from the City Attorney to adopt the proposed ordinance. Mayor Esteves concurred with Mr. Livengood.

City Attorney Mattas read aloud the title of Ordinance No. 41.11 "An Ordinance of the City Council of the City of Milpitas amending Milpitas Municipal Code Section I-500-

1.01 and 1.05 regarding the appointment of Planning Commissioners.”

(1) Motion: to waive the first reading beyond the title of Ordinance No. 41.11

Motion/Second: Councilmember Livengood/Vice Mayor Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

(2) Motion: to introduce Ordinance No. 41.11

Motion/Second: Councilmember Livengood/Vice Mayor Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

RESOLUTIONS

11. Amending the City's Classification Plan

Human Resources Manager Carmen Valdez presented the staff recommendation to introduce a change in management positions. The Classification Plan amendment would combine the current Parks Division with the Recreation Division to make a new department called “Parks and Recreation Services Department.”

City Manager Lawson stated it would enhance responsiveness for parks, fields, courts, etc. within the City. The Human Resources Director stated this arrangement follows what is practiced in many other local agencies in the Bay Area, and offered opportunity for efficiency in serving the needs of the community.

Motion: Adopt Resolution No. 7630 amending the City of Milpitas Classification Plan to add a new classification of Parks and Recreation Director with a salary of \$126,297 - \$153,515.

Motion/Second: Councilmember Livengood/Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

BIDS AND CONTRACTS

Six items were adopted on the Consent Calendar.

ADJOURNMENT

Mayor Esteves adjourned the meeting at 9:34 PM.

The foregoing minutes were approved by the Milpitas City Council as submitted on October 17, 2006.



Mary Lavelle
City Clerk